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Nos. 80-848; 80-883

In the Supreme Court

OF THE

United States

OCTOBER TERM, 1980

PIPER AIRCRAFT COMPANY, *Petitioner*,

VS.

GAYNELL REYNO, *Respondent*

HARTZELL PROPELLER, INC., *Petitioner*,

VS.

GAYNELL REYNO, *Respondent*

On Writs of Certiorari to the United States Courts of Appeals for the Third Circuit

MOTION FOR LEAVE TO FILE BRIEF FOR AN AMICUS CURIAE IN SUPPORT OF RESPONDENT

BRIEF FOR AMICUS CURIAE IN SUPPORT OF RESPONDENT

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The Law Offices of Gerald C. Sterns, as attorneys representing hundreds of foreign plaintiffs in matters of international litigation pending throughout the United States, hereby respectfully move for leave to file the attached Brief as *amicus curiae* in the above-captioned matters now pending before the Court. Consent for the filing of this Brief has been obtained from counsel for Respondent in each matter, and a copy of that consent is attached to this Motion as an Appendix. Consent also has been sought

from counsel for Petitioners, but that consent has not been granted.

The Law Offices of Gerald C. Sterns (hereinafter referred to as "movant") are often retained by plaintiffs in matters involving air disasters and international products liability actions. As of the moment of this writing, movant represents foreign plaintiffs in legal actions against American manufacturers in numerous States, including California, Pennsylvania, Utah, New York, New Jersey, Washington and Illinois. The issue of *forum non conveniens* is a consistent factor in this type of international litigation, and, since October of 1979, the findings and conclusions of law in *Reyno v. Piper*, 479 F.Supp. 727, reversed, 630 F.2d 149, have been a constant and indispensable issue in all *forum non conveniens* litigation in which movant has been involved.

Petitioners Hartzell Propeller, Inc., and Piper Aircraft Company have submitted Briefs to the Court ostensibly presenting for review a single question pertaining to the propriety of granting a *forum non conveniens* dismissal where such a dismissal would result in a change in applicable law. Given the breadth of the Third Circuit's decision in *Reyno v. Piper Aircraft*, 630 F.2d 149 (1980), and the variety of issues considered therein, it is the contention of movant that any findings made by the Court on this point were not dispositive of the case, and should not be dispositive on review. This contention reaps support from Petitioners themselves as they make little attempt in their Briefs to limit their arguments to the sole question each has presented for review, but instead address such far-

reaching issues as the need to afford a foreign plaintiff the same right to choice of forum as is afforded an American plaintiff, the failure of the trial court and defendants to identify witnesses for whose convenience dismissal was required, the trial court's erroneous determination of choice of law, and the inappropriateness of justifying dismissal on the basis of unsubstantiated problems in applying foreign law.

These issues have impact far beyond the immediate facts of the cases currently before the Court. It is imperative that advocates for plaintiffs and prospective plaintiffs involved in litigation against multi-national American based companies have an opportunity to be heard on matters that directly affect their abilities to proceed against those companies in their home forums.

In contrast, the Briefs filed by Petitioners Hartzell and Piper Aircraft are supported by a proferred Brief for *Amici Curiae* filed by America's three largest airplane manufacturers. Whenever an aircraft crashes anywhere in the free world there is a very high probability that it will have been manufactured in the United States, often by one of these companies. *Amici Curiae's* protestations to the contrary notwithstanding there is no reason why foreign victims should be denied access to the courts which enforce the laws governing manufacture of the faulty and dangerous aircraft which caused them injury. The contentions made by *Amici Curiae*, if heard, require rebuttal in order properly to be evaluated.

Even should the aircraft manufacturers fail to qualify under Rule 36 for participation as *Amici*, it is respectfully requested that the attached Brief of the instant movant still be allowed. Matters therein addressed, such as the qualifications and fundamental fairness inherent in the Third Circuit's dismissal policy, reflect the impact that the Court's decision could have on a spectrum of *forum non conveniens* cases. These are matters not necessarily addressed by the parties which, of course, are primarily concerned with the formulation and refinement of the *forum non conveniens* doctrine within the confines of a single, unique fact situation. Given the importance of *forum non conveniens* as a balance to the concept of long-arm jurisdiction, it is respectfully submitted that the disposition of the cases before the Court would and should be affected by consideration of the facts and questions of law set forth in movant's Brief.

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STATEMENT OF THE CASE

Pursuant to the provisions of Rule 36, paragraph 5, of the Supreme Court Rules, it will be left to petitioners and respondent to set forth the factual background of the above-captioned cases in which suit was brought in this country against the American manufacturers of an aircraft and propeller involved in a fatal accident in Scotland. Suffice to say that these cases are now before the Court on writs of certiorari to the United States Court of Appeals for the Third Circuit and that they arise out of

that Circuit's decision in *Reyno v. Piper Aircraft, et al.*, 630 F.2d 149 (July, 1980). By that decision, the Third Circuit found that defendants (now petitioners) Piper Aircraft Company and Hartzell Propeller, Inc., did not meet the burden required of them for *forum non conveniens* dismissal and reversed the decision of the district court which had dismissed the case.

One of the findings made by the Third Circuit in discussing whether the district court had abused its discretion in ordering dismissal was that error had been made in the district court's choice of law determinations. Having made this finding, the Third Circuit then went on to say:

> Even under the district court's choice of law analysis, requiring a mixture of American and Scottish law, it is apparent that the dismissal would work a change in the applicable law so that the plaintiff's strict liability claim would be eliminated from the case. But this Court has held that a dismissal for forum non conveniens, like a statutory transfer, "should not, despite its convenience, result in a change in the applicable law." Only when American law is not applicable, or when the foreign jurisdiction would, as a matter of its own choice of law, give the plaintiff the benefit of the claim to which she is entitled here, would dismissal be justified. (footnote omitted)

630 F.2d at 163-64.

The sole question before this Court pertains to the above-quoted portion of the Third Circuit's 38-page decision. Petitioner Piper Aircraft interprets the Third Circuit's declaration to mean that a foreign plaintiff may defeat a motion to dismiss a case from Federal district

court on the ground of *forum non conveniens* merely by showing that the substantive law that would be applied in the Federal district court is more favorable to it than would be the laws of its native courts. (See Brief For Petitioner Piper Aircraft Company, "Question Presented" at i). Similarly, Petitioner Hartzell Propeller interprets the Third Circuit's statement to mean that a motion to dismiss on the ground of *forum non conveniens* should be denied when the law of the alternative forum is expected to be less favorable to the foreign plaintiff. (See Brief For Petitioner Hartzell Propeller, Inc., "Question Presented" at i).

It is the position of the *amicus curiae*, as set forth in this Brief, that the Third Circuit's statement and its implications are (1) misunderstood by petitioners, and (2) reflective of the fundamental fairness inherent in the doctrine of *forum non conveniens*. It is also the position of the *amicus* that the reference made to the possibility of a change in the applicable law was not a dispositive factor in the Third Circuit's decision, which, in actuality, was dictated by other substantive errors committed by the district court.

INTEREST OF AMICUS CURIAE

The Law Offices of Gerald C. Sterns have represented and are now representing hundreds of foreign-domiciled plaintiffs in lawsuits filed in America against American manufacturers whose products are sold, distributed and utilized in other lands. Jurisdiction over the type of American manufacturers involved in multi-national dealings is almost never disputed in American courts as a result of

International Shoe Co. v. Washington, 326 U.S. 310 (1945), and its progeny. Instead, American manufacturers, even when sued in the districts in which they have their principal places of business, often seek dismissal of actions filed by foreign plaintiffs on the ground that the American court in which such a case is pending is an inconvenient location for litigation.

In an effort to avoid being sued in a place where they have elected to do business, American manufacturers will often volunteer to be sued in a foreign jurisdiction where laws and procedures are less consumer-oriented and, therefore, more favorable to defendants. (See proffered Brief for The Boeing Company, *et al.*, "Interest of Amici Curiae" at 2). Such a maneuver, however, while extended in the name of convenience, usually serves to deprive plaintiffs of causes of action. It also, to a substantial degree, serves to immunize manufacturers from liability for the harm they cause abroad. This, in turn, encourages American manufacturers to engage in such activities as "dumping substandard products, cutting back on warnings which might discourage sales, and funneling products through offshore subsidiaries and satellites.

Since this Court's landmark decisions in *Gulf Oil Corporation v. Gilbert*, 330 U.S. 501 (1947), and *Koster v. (American) Lumbermen's Insurance*, 330 U.S. 518 (1947), controversy has raged between proponents of plaintiffs' and defendants' points of view over the proper use, requirements and extent of the *forum non conveniens* doctrine. The *Reyno v. Piper* decision issued by the Third Circuit provided a clear and thorough analysis of the purposes of the

doctrine and the methods by which it may be effected. Accordingly, by granting certiorari this Court has accepted a unique opportunity to refine and solidify an aspect of the common law which has hitherto been variously and confusingly abused, misinterpreted and misunderstood. By offering this Brief in support of respondent Gaynell Reyno, we, as *amicus curiae*, seek an affirmation of the principles espoused by the Third Circuit.

ARGUMENT

THE THIRD CIRCUIT'S STATEMENT THAT A DISMISSAL FOR FORUM NON CONVENIENS SHOULD NOT RESULT IN A CHANGE IN APPLICABLE LAW WAS (A) QUALIFIED; (B) REFLECTIVE OF THE FUNDAMENTAL FAIRNESS INHERENT IN THE DOCTRINE OF FORUM NON CONVENIENS; AND (C) NOT DISPOSITIVE OF THE CASE

In its decision in *Reyno v. Piper, supra,* 630 F.2d at 163-64, the Third Circuit noted that if plaintiff's case had to be refiled in Scotland, as defendants proposed, such a refiling would necessarily result in the application of Scottish law, thereby eliminating plaintiff's strict liability claim from consideration. But, the Circuit stated, a *forum non conveniens* dismissal is like a statutory transfer[1] between district courts in that it should not result in a change in the applicable law. However, the Circuit was careful to

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[1]The Statute to which the Court thus referred is 28 U.S.C. § 1404(a), which provides:

> For the convenience of parties and witnesses, in the interest of justice, a district court may transfer any civil action to any other district or division where it might have been brought.

provide exceptions to this rule, exceptions which appear to have been overlooked by petitioners. The Circuit declared (*Id.*):

> Only when American law is not applicable, or when the foreign jurisdiction would, as a matter of its own choice of law, give the plaintiff the benefit of the claim to which she is entitled here, would dismissal be justified.

By thus qualifying the rule, the Third Circuit acted in direct accord with the pervasive purpose of the *forum non conveniens* doctrine: fairness.

As set forth in *Gulf Oil Corp. v. Gilbert*, 330 U.S. 501, 506-07 (1947):

> In all cases in which the doctrine of forum non conveniens comes into play, it presupposes at least two forums in which the defendant is amenable to process; the doctrine furnishes criteria for choice between them.

The act of dismissal from a forum in which jurisdiction and venue are correct as a matter of law is a radical one, appropriate only in "exceptional circumstances."[3] But as this Court noted in *Gilbert, supra*, 330 U.S. at 508:

> . . . the plaintiff may not, by choice of an inconvenient forum, "vex," "harass," or "oppress" the defendant by inflicting upon him expense or trouble not necessary to his own right to pursue his remedy. (footnote omitted)

Accordingly, a court's task in hearing a *forum non conveniens* motion is to "weigh relative advantages and obstacles to a fair trial." *Id.* at 508.

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[3]See *Gulf Oil Corp. v. Gilbert, supra*, 330 U.S. at 504.

Under established principles of long-arm jurisdiction (See, e.g. *International Shoe v. Washington*, 326 U.S. 310 (1945); and *World-Wide Volkswagen v. Woodson*, 444 U.S. 286 (1980)) a court's task is considerably burdened by the multiplicity of jurisdictions in which corporate defendants are properly subject to suit. A company like Piper Aircraft, for example, could be sued in nearly every Federal district in the nation. Consequently, the doctrine of *forum non conveniens* as a method for avoiding the harassment and vexation of trials in legally proper but otherwise inappropriate places stands as an indispensable corollary to the concept of long-arm jurisdiction. Consequently, too, the doctrine inherently holds a strong potential for abuse by defendants seeking to avoid prosecution, shop for a more favorable forum, or obtain a change in applicable law. Indeed, as will be discussed, *infra*, the standard practice of corporate defendants has become to "volunteer" to submit to jurisdiction in another country as a means for obtaining dismissals of cases brought against them in their home courts. See, *e.g., Harrison v. Wyeth*, 510 F.Supp. 1 (E.D.P.A. 1980); *Purser v. American Home Products*, 80 Civ. 710 (JMC)(S.D.N.Y. 1980).

When faced with a similar situation resulting from the ability of a defendant to seek a transfer of a case from one Federal district to another, this Court wisely established a middle ground which would allow a defendant to avoid harassment and vexation while still preserving a plaintiff's right to the advantages which must adhere to the initiator and burden-bearer of litigation. In *Van Dusen v. Barrack*, 376 U.S. 612, 626-43 (1964), it was held that a change of forum, having been obtained to accommodate the

convenience of defendant, should not also present defendant with the added bonus of a change in the applicable law.[3] Impressed by the wisdom of *Van Dusen*, the Third Circuit subsequently held in *De Mateos v. Texaco*, 562 F.2d 895, 899 (1977), that the same reasoning was applicable to dismissals on *forum non conveniens* grounds.

A dismissal, like a transfer, is permitted for reasons of convenience, and to allow either without considering the difference in law which would be applied by the transferor forum could amount to directing a verdict on the merits without examining them. See Note, 64 Harv.L.Rev. 1347, 1354-55 (1951), cited in *Van Dusen v. Barrack, supra*, 376 U.S. at 957, n.25. Moreover, since a defendant rarely, if ever, seeks a transfer to a jurisdiction with laws less favorable to it (and certainly would not "volunteer" to submit itself for suit in such a jurisdiction), the concomitant ability to change law along with courtroom would constitute a one-way street of forum-shopping benefits which would encourage multi-national corporations to burden courts with *forum non conveniens* motions in every action brought against them. Suddenly, what had existed as a safeguard of fairness would be turned into a defense trump card, smearing the established boundaries of jurisdiction and obliterating a plaintiff's legal right to select any forum where the defendant is amendable to process.

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[3] In *Van Dusen*, the Court held (376 U.S. at 633):

> Of course [cited] cases allow plaintiffs to retain whatever advantages may flow from the state laws of the forum they have initially selected. There is nothing, however, in the language or policy of § 1404(a) to justify its use by defendants to defeat the advantages accruing to plaintiffs who have chosen a forum which, although it was inconvenient, was a proper vehicle.

Cf. *Headrick v. Atchison T. & S.F.R. Co.*, 182 F.2d 305, 309 (10th Cir. 1950), cited with approval in *Van Dusen v. Barrack, supra*, 376 U.S. at 631-32.

In the instant cases, the Third Circuit sought only to apply the same concepts of fairness which this Court embraced in *Van Dusen*. Naturally, however, an essential difference exists between a statutory transfer to an American court and a common law dismissal in favor of a sovereign foreign court. No court in this country can require that a court in another country apply the laws of the transferee forum. The solution adopted by the Third Circuit in *DeMateos v. Texaco, supra,* and followed by it *Reyno v. Piper, supra*, was, therefore, the only logical one available: a case cannot be dismissed if it will deprive plaintiff of his ability to recover if the facts he alleges are true.[4] Thus, a case cannot be dismissed in favor of a foreign court if it will result in a change of law so as to deprive a plaintiff of a claim which would be available under American law—unless American law is not applicable.

When would American law not be applicable? When the case has no more than a technical right to be in the original forum, as, for example, in *Canada Malting Co. v. Paterson Steamships,* 285 U.S. 413 (1932), where suit arose between a foreign plaintiff and a foreign defendant as a result of a collision between foreign vessels on the American side of the Great Lakes; or in *Dahl v. United Technologies,* 652 F.2d 1027 (3rd Cir. 1980), in which a

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[4]See Bickel, *The Doctrine of Forum Non Conveniens as Applied in the Federal Courts in Matters of Admiralty*, 35 Cornell L.Rev. 12, 28 (cited as authority in *Reyno* at 164, n.51.).

helicopter owned and operated by a Norwegian company which had purchased it from a Japanese company crashed in Norwegian waters and suit was then brought in Delaware, the State of incorporation of the parent company of the Connecticut manufacturer which had sold the helicopter to the Japanese seven years before. Outside of the fact that United Technologies was, like most companies on the New York Stock Exchange, originally incorporated in Delaware, there was not the slightest connection in *Dahl* between the forum and the facts of the case and plaintiffs should not, in fairness, have expected the laws of that State to apply.

Examination of cases relied upon by petitioners will reveal as a common thread that those in which dismissal was ordered on *forum non conveniens* grounds were those in which the law of the dismissing forum was not applicable. *Fitzgerald v. Texaco, Inc.*, 521 F.2d 448 (1975), cert. den. 96 S.Ct. 781 (1976), for example, was an admiralty case involving a German vessel, a Panamanian vessel and a Peruvian vessel in an incident which took place off the coast of England. *Swift & Co. v. Compania Columbiana*, 339 U.S. 684, 697 (1950), distinguished suits "between" foreigners. *Dauser v. Firestone Tire & Rubber Co.*, 86 F.R.D. 120 (S.D.N.Y. 1980), was an action brought in New York against an Ohio company for an accident experienced by Dutch people in Germany and the court found that the only connection the forum State had with the case was that it was one of the States in which defendant happened to be doing business. In *Pain v. United Technologies*, 637 F.2d 775 (D.C.Cir. 1980), as in *Dahl v.*

United Technologies, supra, the tort alleged bore no relevant connection to plaintiffs' chosen forum.

The cases now at issue stand in marked contrast to those relied upon by petitioners in seeking reversal of the Third Circuit's decision. The forum State of Pennsylvania is that in which defendant Piper actually constructed the allegedly defective airplane. All parties can logically expect that the laws of the State in which a defendant's acts took place will be the laws governing those acts and can plan accordingly. See Ehrenzweig, *Comments on Babcock v. Jackson,* 63 Columbia Law Review 1212, 1243 (1963). On the other hand, the inability of an injured or damaged plaintiff to prosecute an action against a defendant under the laws of the defendant's home forum effectively gives that defendant license to avoid standards of care imposed by the place where it has chosen to do business, provides only that the resulting effects occur outside the State. Worse, it gives such license in the name of convenience.

In almost all instances, convenience to one party will mean inconvenience to the other. But how much can a corporate defendant with national and multi-national operations be inconvenienced by being sued in its home court? Even in the more common situation, where a plaintiff sues a defendant in plaintiff's home court, "there is good reason why it should be tried in the plaintiff's home forum if that has been his choice." *Koster v. (American) Lumbermens Mutual Ins. Co., supra,* 330 U.S. at 524. Thus, where a plaintiff has "ceded the 'home turf' advantage" to a defendant of much greater economic capability, the arguments in favor of depriving plaintiff of his chosen

forum because of the burden that would be imposed on defendant are slim indeed. *Phoenix Canada Oil Co. v. Texaco, Inc.*, 78 F.R.D. 445, 453 (D.Neb. 1978). See also *Reavis v. Gulf Oil Corp.*, 85 F.R.D. 666, 673 (D.Dela. 1980).

They are particularly slim in cases involving suits on behalf of individuals against aircraft manufacturers which immediately dispatch teams of experts to the accident site. These teams become necessary parts of the official investigation groups, thus giving the manufacturers unique access to pertinent information as to the cause of the crash. Having their own personnel perform on-site investigations also gives aircraft manufacturers a decided advantage in producing live testimony at trial—wherever it may occur.

In the instant matter, a Pennsylvania aircraft manufacturer and an Ohio propeller manufacturer would have the Court believe that trial in Pennsylvania would be far more inconvenient for them than trial in a court thousands of miles and an ocean away. So onerous do defendants consider a trial in Pennsylvania to be, that they have even agreed to waive all defenses to jurisdiction if only the Court will allow them to be sued in Scotland. See *Reyno v. Piper, supra*, 630 F.2d at 155; and Brief for Petitioner Hartzell Propeller, Inc., at 3. This naturally raises the question of whether Scotland is even a viable alternative forum sufficient to enable a *forum non conveniens* dismissal. After all, *Gulf Oil Corp. v. Gilbert, supra*, 330 U.S. at 506-07, said that in *all* cases in which the doctrine comes into play it *presupposes* an alternative forum in which the defendant is amenable to process. Here, the availability

of Scotland as an alternative forum is dependent on some future act of acquiescence offered as a gesture of concession by defendants. As such, it would not have been available to plaintiff at the time she brought the action.

Faced with a similar situation in dealing with Federal forum transfers under 28 U.S.C. § 1404(a), this Court held in *Hoffman v. Blaski*, 363 U.S. 335, 344 (1960):

> But the power of a District Court under § 1404(a) to transfer an action to another district is made to depend not upon the wish or waiver of the defendant but, rather, upon whether the transferee district was one in which the action "might have been brought" by plaintiff.

While *Hoffman v. Blaski* dealt with the forum transfers authorized by specific statute (which requires a lesser burden on the part of a defendant than does a motion to dismiss, *Norwood v. Kirkpatrick*, 349 U.S. 29, 32 [1955]), the reasoning remains applicable to the instant case:

> The thesis urged by petitioners would not only do violence to the plain word of § 1404(a), but would also inject gross discrimination. That thesis, if adopted, would empower a District Court, upon a finding of convenience, to transfer an action to any district desired by the *defendants* and in which they were willing to waive their statutory defenses as to venue and jurisdiction over their persons, regardless of the fact that such transferee district was not one in which the action "might have been brought" by the plaintiff. Conversely, that thesis would not permit the court, upon motion of the *plaintiffs* and a like showing of convenience, to transfer the action to the same district, without the consent and waiver of venue and

> personal jurisdiction defenses by the defendants. (emphasis in original)

Applying the reasoning in *Hoffman* to the "two forums" test enunciated in *Gulf Oil v. Gilbert, supra*, 330 U.S. at 506-07, it is clear that if plaintiffs' cases against defendants could not have been transferred to Scotland on plaintiffs' motion for convenience, then defendants, too, should be precluded from unilaterally transferring the case. A defendant should not be able to take advantage of the subsequent device of creating for itself a jurisdiction more favorably disposed to its point of view. See *Pain v. United Technologies Corp., supra*, 637 F.2d at 783, which held that before the doctrine of *forum non conveniens* can be applied there must be two alternative forums with jurisdiction "over the subject matter and the parties."[9]

While the efforts of any corporate defendant to have a suit removed from its local court on the ground of "convenience" must be looked at with a jaundiced eye, efforts to propel a case into a distant forum where jurisdiction is dependent upon defendants' consent must bear particularly close scrutiny. In such instances, the potential for a change in law becomes all the more significant as a trial tactic (see *Reyno v. Piper, supra*, 630 F.2d at 163-64); and just as plaintiffs should not be able to burden defendants with an

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[9]The D. C. Circuit also noted in *Pain, supra*, 637 F.2d at 784, that, "As a prerequisite," the court must establish whether an adequate alternative forum exists which possesses jurisdiction over the whole case.

inappropriate forum, so, too, should defendants be prevented from being able selectively to submit themselves to jurisdiction.

Finally, examination of the Third Circuit's opinion in *Reyno v. Piper, supra,* 630 F.2d 149, will reveal that the issue of whether dismissal of Reyno's action would result in a change of law simply was not determinative of the Circuit's action. First, the Circuit found that the district court was in error for not according foreigners the same considerations traditionally given plaintiffs in *forum non conveniens* matters. *Id,* 159. Secondly, the Circuit found the district court in error for holding that a plaintiff's choice of forum is entitled to less weight when that forum is not plaintiff's own State of residence. *Id.* Thirdly, the Circuit found the district court in error for premising dismissal on general allegations as to the convenience of unidentified witnesses,[6] and for finding the convenience of experts "to be of small importance." *Id.* at 160-61. Fourthly, the Circuit found the district court in error for concluding that it would be unfair for defendants to be subjected to different trials on differing theories of liability in different jurisdictions. *Id.* at 162. Only fifthly, did the Circuit address the issue of the importance ascribed by the district court to the applicable choice of law rules. *Id.* at 163.

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[6]Accord, *Plum Tree, Inc. v. Stockment,* 488 F.2d 754, 756-57 (3d Cir. 1973); *American Standard, Inc. v. Bendix Corp.,* 487 F.Supp. 254, 267 (W.D.Mo. W.D. 1980); *Essex Crane Rental v. Vic Kirsch Construction,* 486 F.Supp. 529 (S.D.N.Y. 1980); *Bartolacci v. Corp. of Presiding Bishop,* 476 F.Supp. 381, 383 (E.D. Pa. 1979).

Gulf Oil Corp. v. Gilbert, supra, 330 U.S. 508, noted that choice of law is just one of the factors of public interest which has a place alongside factors of private interest in applying the doctrine. The attention which the Circuit devoted to examining the district court's findings on this issue therefore followed only from the district court's admission that choice of law was the "uppermost factor" in its decision to dismiss. See *id.* at 163 and n. 48. The Circuit thereupon found not only that the district court had erred in its choice of law determinations, but also that it had erred in its application of settled principles of *forum non conveniens. Id.* at 163. As but one of several elements[7] in this fifth finding of error, the Circuit noted that a *forum non conveniens* dismissal should not, except in certain circumstances, result in a change in the applicable law.

Obviously, this was not the *sine qua non* of the Circuit's decision and, while we submit that it is correct as a matter of law, it should not in any event be used as a basis for setting aside a well-reasoned, incisive opinion. Any decision jeopardizing the correctness of the numerous legal conclusions reached by the Third Circuit with respect to *forum non conveniens* would return the doctrine to a state of chaos and spawn a proliferation of litigation on each of the issues settled by *Reyno v. Piper.*

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[7]Others included the district court's aversion to determining and applying foreign law, and the district court's incorrect analysis of the choice of law rules which the initial forum State of California would apply to Piper and the present forum State of Pennsylvania would apply to Hartzell. *Id.* at 164-65.

CONCLUSION

The Third Circuit's decision in *Reyno v. Piper Aircraft, et al.*, 630 F.2d 149, should be affirmed and the relief sought by petitioners denied.

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July 8, 1981

(Appendix follows)

IN THE SUPREME COURT OF THE UNITED STATES

No. 80-848

PIPER AIRCRAFT COMPANY, Petitioner,

v.

GAYNELL REYNO, et al., Respondents.

CONSENT OF RESPONDENTS TO FILING OF AN AMICUS CURIAE BRIEF

The undersigned counsel for Respondents, Gaynell Reyno, et al., hereby consents to the filing of an amicus curiae brief in the above-captioned matter by the Law Offices of Gerald C. Sterns, San Francisco.

Dated:

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